THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 899 of 2005 (S/J)

Bhola @ Sonu @ Arun
S/O Dharam Pal,
R/O village Rahimpur, P.S. Gangnahar, Roorkee,
District Hardwar.

… **Applicant.**

Versus

1. State of Uttaranchal.
2. District and Sessions Judge Haridwar.
3. Tara Chand S/O Molhad, R/O Village Rahimpur
   P.S. Gangnahar Roorkee, District Haridwar.

… **Respondents.**

Sri Navneet Kaushik, Adv., learned counsel for the petitioner.
Learned A.G.A. for the respondent no. 1 & 2.

Dated December 14, 2005.

PC:
(Hon'ble B.S. Verma, J.)

This application has been filed under Section 482 of the Code of Criminal Procedure against the order dated 1-12-2005 passed by the Sessions Judge Haridwar in Sessions Trial No. 24 of 2003, State Vs. Deepak and others, under Sections 147, 148, 149, 302 I.P.C. of P.S. Gangnahar, Roorkee (Hardwar), whereby the application of the accused-applicant (75-B) moved for separation of the case of the applicant on the ground of his being juvenile on the date of occurrence was rejected.

2. Relevant facts were that the respondent no.3 lodged an F.I.R. against the applicant and others on 15.10.2002 alleging that his brother was murdered by the applicant and other co-accused. The F.I.R. was registered at Crime No. 220/2002 under Sections 147, 148, 149 and 302 I.P.C. and after investigation of the case, a charge sheet was submitted against the accused including the applicant in the Court of the Magistrate. Ultimately the case was committed to the Court of Session and it was registered as S.T.No. 24 of 2003 and the trial proceeded. It is alleged that when the statement of the

accused-applicant under Section 313 Cr.P.C. was recorded, it was revealed that he was a juvenile on the date of commission of the alleged crime, therefore, the case against the applicant could proceed only under the provisions of the Juvenile Justice Act. Accordingly application 75-B was moved before the respondent no.2 with the contention that the applicant being a juvenile on the date of occurrence, his trial should proceed under the provisions of Juvenile Justice (Care and Protection of Children) Act 2000 and the case against the applicant be separated from that of the co-accused. The matter was considered by the respondent no. 2 on 22.11.2005, when affidavit was filed by the applicant Bhola stating that he had no knowledge about the date and year of his birth. Thereafter on 26.11.2005, application was moved by the applicant praying for time to file evidence in support of his age. The learned Sessions Judge recorded the abstract oral statement of the applicant and fixed 1.12.2005 for production of documentary evidence in support of age of the applicant. The applicant filed copy of voter list, ration card and extract of family register. The Sessions Judge passed the impugned order observing that there is no force in the application and rejected the application 75B.

3. The main contention of the learned counsel for the applicant is that the learned Sessions Judge lost sight of the relevant provisions of the Juvenile Justice Act. It was submitted that it is obligatory on the part of the court that whenever a plea is raised by accused that he was a ‘child’ and the court entertains any doubt his age, it has to hold an inquiry itself for determination of age or cause an enquiry to be held and seek a report. In support of his contention, the learned counsel for the applicant has placed reliance upon the Apex Court Judgment in the case of Bhola Bhagat and others Vs. State of Bihar [1997 (35) A.C.C. 835] wherein it was observed that “Before parting with the judgment, we would like to re-emphasise that when a plea is raised on behalf of an accused that he was a “child” within the meaning of the definition of the expression under the Act, it becomes obligatory for the court, in case it entertains any

doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially oriented legislation it is an obligation of the Court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other."

4. In the present case, the learned Sessions Judge has failed to follow the provisions of Juvenile Justice Act and no speaking order was passed by the learned Judge as has been laid down by the Apex Court in the aforesaid judgment. In view of the facts and circumstances of the case, I have no option but to allow the petition and to direct the Sessions Judge concerned to examine the matter in the light of the Apex Court judgment referred to above.

5. In the result, the petition succeeds. The impugned order of dismissal of application (75-B) moved by the applicant is set aside. The Sessions Judge Haridwar is directed to decide the application afresh by holding an inquiry himself for determination of age of the applicant or cause an enquiry to be held in accordance with law by a speaking order before proceeding with the trial further.

(B.S.Verma, J.)

RCP